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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-683

INSURANCE COMPANY OF NORTH AMERICA,
Petitioner,

versus

CONTINENTAL OIL COMPANY and
CHARLES N. DUDDLESTON, d/b/a
DUDDLESTON WELDING COMPANY,
Respondents.

BRIEF IN OPPOSITION TO INSURANCE COMPANY OF NORTH AMERICA'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To the Honorable Warren E. Burger, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The Respondent, CONTINENTAL OIL COMPANY, prays that petitioner's application for a writ of certiorari be denied by this Honorable Court.

ARGUMENT

The Fifth Circuit, in line with *Rodrigue*,[1] held that in cases involving accidents occurring on stationary platforms on the Outer Continental Shelf, the law of the adjacent state is to be applied rather than maritime law. Petitioner, however, has asked that this Honorable Court grant writs to review and ultimately reverse the Fifth Circuit's ruling that the Louisiana Law of contributory negligence should apply in lieu of the Maritime Doctrine of comparative negligence, and it cites as authority the Fifth Circuit's decision in *Chevron Oil Company v. Huson*, 430 F.2d 27, wherein that Court held that the Louisiana Statute of Limitations was not applicable and applied, instead, the Maritime Doctrine of Laches. Petitioner argues that "like treatment should be given the problem of mutual fault." Petitioner's brief, at page 11.

However, this Honorable Court has now categorically rejected this argument by handing down its decision on December 6, 1971 in *Chevron Oil Company v. Huson*, (No. 70-11), ____ U.S. ____. This Court stated in *Rodrigue* and it has reaffirmed in *Huson* that Louisiana law and not Maritime law is applicable to cases such as this.

Petitioner bases virtually his entire argument on Conflict of Law Principles regarding substance and procedure distinctions but *Huson* makes it very clear

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[1]Rodrigue v. Aetna Casualty & Surety Company, 395 U.S. 351 (1969).

that "ordinary conflict of law principles have no relevance."[2] Furthermore, Petitioner's approach in brief, as was the Fifth Circuit's approach in *Huson* "subverts the congressional intent documented in *Rodrigue*, id., at 359-366, that Admiralty Doctrines should *not* apply under the Lands Act."[3] (Emphasis by the Court) Petitioner argues for the "long-sought-for dream of 'uniformity of results' ",[4] and suggests that the granting of his application for writs and ultimately the reversal of the Fifth Circuit's ruling that Louisiana law and, concomitantly, contributory negligence applies would achieve that result. But this Honorable Court has recognized in *Huson* that "Congress specifically *rejected* national uniformity and specifically provided for the application of state remedies . . ."[5]

Petitioner has also raised the question as to whether or not *Rodrigue* and its progeny should be applied retroactively, and it might appear at first blush that *Huson* lends support to that argument. However, it is important to remember that this Court in *Huson* refused only to apply Louisiana's Statute of Limitations retroactively. It reasoned that retroactive application of this doctrine would deprive the Plaintiff of *any remedy* whatsoever on the basis of a superseding legal doctrine which was unforeseeable. According to the Court, it would thus produce inequitable results of irrevocable proportions by lulling the Plaintiff into

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[2]Chevron Oil Co. v. Huson, _____ U.S. _____ (1971).
[3]Ibid.
[4]Petitioner's brief, at page 15.
[5]Chevron Oil Co. v. Huson, supra.

"sleeping on his rights" and then denying him his day in court.

These same considerations are simply not present, however, when one considers the effect of the retroactive application of other substantive aspects of *Rodrigue*, such as the application of fault doctrines, for example. The obvious fact is that Petitioner will not have been denied his day in court, and the very same principles of negligence will have been at issue; it is only their legal application that may differ in the end. To apply *Rodrigue* retroactively would not deprive plaintiff of his remedy; this he would still have, although by his own tortious conduct, he may ultimately be denied the right to recover damages. This would certainly produce no inequitable result.

This Honorable Court, for that matter, made it very clear in *Huson* that it did not hold that *Rodrigue* in its entirety must be applied nonretroactively. The Court specifically stated that "retroactive application of all state substantive remedies under Rodrigue would not work a comparable hardship or be so inconsistent with the purposes of the Lands Act."[6]

CONCLUSION

Thus, there are no special and important reasons as envisioned by Rule 19 of the Supreme Court Rules for this Honorable Court to grant writs in this case. This Court, in *Rodrigue* and again in *Huson* has made

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[6]Ibid.

it very clear what law is to be applied under factual circumstances as exist in the case at bar, and the Fifth Circuit's decision is four-square in line with this Court's pronouncement. No useful purpose would be served by taking up this Court's valuable time to have the Court reconsider legal issues so recently resolved by this Court. Petitioner's application for writs should, therefore, be denied.

Respectfully submitted,

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